

Bur. of Consumer Financial Protection

§ 1010.7

use of any means or instruments of transportation or communication in interstate commerce, or of the mails, unless a Statement of Record is in effect in accordance with the provisions of this part. In non-exempt transactions, the developer must give each purchaser a printed Property Report, meeting the requirements of this part, in advance of the purchaser's signing of any contract or agreement for sale or lease. Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control No. 3170-0012.

§ 1010.4 Exemptions—general.

(a) The exemptions available under §§1010.5 through 1010.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

(b) With the exception of the sales or leases which are exempt under §1010.5, the anti-fraud provisions of the Act (15 U.S.C. 1703(a)(2)) apply to exempt transactions. The anti-fraud provisions make it unlawful for a developer or agent to employ any device, scheme, or artifice to:

- (1) Defraud;
- (2) To obtain money or property by means of any untrue statement of a material fact, or
- (3) To omit to state a material fact necessary in order to make the statements made not misleading, with respect to any information pertinent to the lot or subdivision; or
- (4) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under §1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed. See §1011.15(f).

(d) Eligibility for exemptions available under §§1010.5 through 1010.14 is self-determining. With the exception of the exemptions available under §§1010.15 and 1010.16, a developer is not required to file notice with or obtain the approval of the Director in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Nonbank Supervision, the Bureau's position on the jurisdiction or non-exempt status of a particular subdivision.

§ 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1703. In accordance with 15 U.S.C. 1703(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

§ 1010.6 One hundred lot exemption.

The sale of lots in a subdivision is exempt from the registration requirements of the Act if, since April 28, 1969, the subdivision has contained fewer than 100 lots, exclusive of lots which are exempt from jurisdiction under §1010.5. In the sale of lots in the subdivision that are not exempt under §1010.5, the developer must comply with the Act's anti-fraud provisions, set forth in §1010.4(b) and (c).

§ 1010.7 Twelve lot exemption.

(a) The sale of lots is exempt from the registration requirements of the Act if, beginning with the first sale after June 20, 1980, no more than twelve lots in the subdivision are sold in the subsequent twelve-month period.